



Memorandum

TO: CITY COUNCIL
SUBJECT: DRAFT SANTA CLARA
VALLEY HABITAT PLAN

FROM: Mayor Chuck Reed
DATE: October 10, 2012

APPROVED: *Chuck Reed*

DATE: *10/10/12*

Based on the draft documents and the work that has been done to date, I see some problems with the HCP/NCCP that need to be fixed so that it is defensible in litigation and has broad support. I am looking forward to the Council Study Session so we can discuss the issues listed below.

Competitive Disadvantages to San Jose

1. The land dedication, fees for burrowing owls and riparian corridors, and the nitrogen fee are not the same in Santa Clara, Sunnyvale, Mountain View, Palo Alto and Fremont.
2. It is not clear how prior agreements and other entitlements will be honored.
3. Implementation policies and procedures are unknown, so there is uncertainty as to what will be required to receive permits.

Costs outweigh benefits for San Jose

1. The Army Corps of Engineers and the Regional Water Quality Control Boards are not parties.
2. San Jose will generate significant fees but will have a minority of the votes in governance and fee increase decisions.
3. San Jose should get credit for having protected burrowing owl habitat at the Airport and WPCP.
4. It could have an adverse impact on the current and future operation of the Airport.

Other

1. Property owners claim that the EIR has weaknesses that will be targets in litigation.

RECOMMENDATION

At the conclusion of the Study Session, we should direct staff as follows:

1. Continue working on the HCP/NCCP and bring it back to the Council for consideration when the following have been accomplished:
 - a. The Army Corps of Engineers and the Regional Water Quality Control Board have agreed in writing to use the HCP as a framework for issuance of permits.
 - b. The cities of Santa Clara, Sunnyvale, Mountain View, Palo Alto and Fremont have agreed to join the HCP, or the land dedication and fee for burrowing owls and riparian corridors that are required by the resource agencies are the same in Santa Clara, Sunnyvale, Mountain View, Palo Alto and Fremont as would be required under the HCP/NCCP.
 - c. Nexus studies for fees have been completed and released.
 - d. The nitrogen fee has been approved as a county-wide requirement with San Jose paying no more than its fair share.
 - e. Rules for pipeline projects are revised so that existing agreements are respected and entitlements previously approved are honored.
 - f. Implementation policies and procedures are ready to be put in place on the effective date so that there is minimal uncertainty of what will be required to comply with the HCP/NCCP and receive permits.
 - g. San Jose gets credit for the burrowing owls and habitat already protected at the Airport and WPCP.
 - h. The boundary of the plan area has been adjusted to exclude the Airport.
 - i. The EIR has been modified to repair weaknesses.
 - j. The cumulative impact of the new fees and existing fees in San Jose on development patterns in the region is considered.
2. Report on progress to the Council through the Transportation and Environment Committee.
3. Bring a request for any additional funding that may be required to accomplish the work outlined above to the Council.

BACKGROUND

Our commitment to participate in the preparation of the HCP/NCCP was based on twin objectives: to provide for the "protection of ecosystems and biodiversity" and the "continued economic health of the region." (Memorandum of Understanding, Section 1. A. Purpose, http://scv-habitatplan.org/www/site/alias_default/318/planning_documents.aspx)

Years of work have produced a HCP/NCCP that will be of great value in reaching one of our two objectives – protecting ecosystems and biodiversity – and we commend our partners and all participants for their efforts. However, the HCP/NCCP, as proposed, falls short of achieving the second objective: to provide for the continued economic health of the region.

As drafted, the HCP/NCCP unfairly burdens San Jose. It would place San Jose at a great disadvantage with other cities in economic development, and the costs to San Jose are greater than the benefits.

Competitive Disadvantages to San Jose

In its current form, the HCP/NCCP would frustrate our longtime goal of balancing jobs and housing by placing San Jose at a competitive disadvantage with other cities in the region. As proposed, it is inconsistent with multiple economic development plans and policies adopted to help San Jose capture a larger share of regional job growth, including:

Envision San Jose 2040 General Plan
North San Jose Vision 2030
Economic Development Strategy
Downtown Strategy
Edenvale Development Policy
Airport Master Plan

Signing on to the HCP/NCCP without the participation of the other cities in the County would handicap San Jose similar to when we alone agreed to development density restrictions after the Golden Triangle Task Force in the 1980s. Other cities captured much more job growth and it took us decades to level the playing field at great expense of time, litigation and money.

I have discussed the HCP/NCCP with more than a dozen property owners and developers representing thousands of acres and billions of dollars of past investment and billions of dollars of potential future investment. None of them think the benefits of the HCP/NCCP will outweigh its costs. All of them think it will delay or stop development. Given their extensive experience, I have to place significant weight on their observations, which include the following:

- It will add significant costs and risks to existing and future projects.
- The Army Corps and RWQCB are not included.
- We will have a new bureaucracy creating uncertainty and ambiguity over implementation and future fee increases.
- Existing entitlements will not be honored.

As a result, they believe that some projects will not move forward in San Jose and more investments will instead be made in neighboring cities that don't participate in the HCP/NCCP. Office/R&D projects necessary to accommodate thousands of jobs are at risk of stalling, and the jobs will go elsewhere. That would perpetuate the jobs/housing imbalance in San Jose, which we have been trying to eliminate for decades.

Costs Outweigh Benefits to San Jose

At this time it appears that the costs to the city will outweigh the benefits to the city. While other agencies would see substantial benefits and have endorsed the plan, it would be a mistake to sign up just because others have. We must look out for the residents and taxpayers of San Jose. As proposed, the HCP/NCCP is unfair to San Jose in several ways:

- It will create a competitive disadvantage for San Jose within the region.
- San Jose gets no credit for the work already done for burrowing owl habitat and nesting areas at the airport and WPCP.
- It increases the cost of infill development in San Jose.
- The burrowing owl land restrictions and fees proposed for San Jose are far beyond what is required in other cities.
- The riparian corridor setbacks and fees in San Jose will not be required in other cities.
- The nitrogen fee is unfairly apportioned to San Jose since a job in Downtown San Jose or South San Jose is assumed to generate as much nitrogen emission per trip as a job in North County.
- The HCP/NCCP is inconsistent with the Airport Master Plan.

The HCP/NCCP would be contrary to ongoing activities at the Airport related to burrowing owl and other wildlife management, capital projects approved but yet to be implemented, and potential revisions to the Airport Master Plan and its associated EIR. We cannot afford to stall the plans to develop the West Side that are important to the fiscal stability of the airport, nor can we place ourselves in conflict with FAA requirements for managing wildlife.

CONCLUSION

San Jose should stay engaged in the development of the HCP and work to achieve its environmental protection goals. However, in its current form, the HCP is not ready for approval because many issues of importance to San Jose are yet to be resolved. We should not sign on the dotted line until the problems outlined above are solved so we can also achieve our economic goals.

San Jose should not adopt the plan on a hope that other cities will do so as well, but we should take the lead to get other cities engaged in the HCP. We should assist in bringing developers, land owners and environmental groups together to deal with the problems and broaden support for adoption.